

BOARD OF APPEALS CASE NO. 5526

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BEFORE THE

APPLICANT: Ronald Sadtler

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ZONING HEARING EXAMINER

REQUEST: Variance to allow a deck within the rear yard setback

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OF HARFORD COUNTY

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HEARING DATE: April 5, 2006

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Ronald Sadtler, is requesting a variance pursuant to Section 267-23C(1)(a)[6] of the Harford County Code, to permit a deck to encroach the 38 foot required rear yard setback (31 foot proposed) in the Rural Residential District.

The subject parcel is located at 3405 Baywood Drive, Forest Hill, Maryland 21050, in the Fourth Election District, and is more particularly identified on Tax Map 32, Grid Number 3C, Parcel 388, in the Jarrettswood subdivision. The parcel contains 0.68 acres more or less.

The Applicant, Ronald Sadtler, appeared, and testified that he is the owner of the subject property. He indicated that he had read the Department of Planning and Zoning's Staff Report, and had no changes or corrections to the information contained therein.

According to the witness, the property is improved by a brick rancher, two sheds, children's playground equipment and landscaping. Mr. Sadtler indicated that due to the location of the septic reserve area in his front yard, his house was built 153 feet behind the front property line. This reduces the useable space of his rear yard to 43 feet. The required rear yard setback is only 40 feet. The Applicant proposes to construct a 12 foot deep attached rear deck. The area of the property where the deck would be constructed is a steep slope, useful for wintertime sledding.

The witness testified that the proposed deck would be 31 feet from the rear setback line at its closest point. Because the rear neighbor's house is also setback 125 feet their home would be approximately 150 feet away from the proposed deck. Mr. Sadtler, therefore, stated that the requested variance will have no impact upon the adjoining rear property. The proposed deck would be approximately 30 feet from the house on parcel which adjoins his property to the right, but would not extend any closer than his existing residence. The Applicant did not introduce any drawing or rendering of the proposed deck other than the sketch included on the site plan filed with his Application.

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Mr. Sadtler indicated that almost every other house in his neighborhood has a similar attached rear deck. His proposed deck will be compatible with both the existing dwelling and other properties in the community. He also testified that, in his opinion, the granting of the requested variance will have no adverse impact on adjacent properties. He has the full support of all his neighbors, including those whose lot adjoins his rear property line. He introduced signed letters in support of the requested Application (Applicants Exhibit Nos. 1A-F) from six adjoining property owners.

Mr. Anthony McClune, Deputy Director, Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune stated that the Department had investigated the request, and visited both the property and surrounding neighborhood. The Department recommended approval of the subject request in its March 13, 2006 Staff Report.

Mr. McClune indicated that the Department found the subject property to be unique, because the lots along Baywood Drive were required to have very large front yard setbacks due to their front yard septic reserve areas. In addition the subject parcel has unique topography, as it slopes down and away from the house toward the rear property line, and also slopes downward from one side property line to the other. As stated in the Staff Report, "[w]hen the lots were created the Code required only a 40 foot front yard setback and a 50 foot rear yard setback.. For the subject property this only left enough area for a 26 foot wide house. If the house met the setback this would have allowed a 12 foot deck. Unfortunately a 31.7 feet wide dwelling was constructed leaving only a 43 foot rear yard setback." This means that the existing dwelling already encroaches into the rear yard setback. However, because decks are allowed to encroach up to 25 percent of the existing rear yard setback, the Applicants need only a 7 foot variance to construct a 12 foot wide attached rear deck.

The witness also testified that the granting of the requested variance will have no adverse impact on neighboring properties. The subject property is one of the only homes in the neighborhood without an attached rear deck, and the proposed deck is consistent with and similar to other decks in the neighborhood. In addition, the adjoining rear dwelling is located over 125 feet away from the proposed deck and there is a row of mature trees across the Applicant's rear property line which will screen it from view of the proposed deck.

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No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicant, Ronald Sadtler, is requesting a variance of approximately 7 feet to construct a 12 foot wide attached rear deck. Section 267-36B, Table V of the Harford County Code requires a minimum 40 foot rear yard setback. Unenclosed decks are allowed to encroach up to 25% into the rear yard setback.

Section 267-23C(1)(a)(6) of the Harford County Code provides as follows:

C. Exceptions and modifications to minimum yard requirements.

(1) Encroachment.

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions.

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.

Section 267-11 of The Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of *Cromwell v. Ward*, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. *Cromwell, supra*, at 721. If the subject property is unique, the hearing examiner must then determine whether literal enforcement of the zoning ordinance, with regard to the unique parcel, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. When the subject lot was created the required front yard setback was only 40 feet. Nevertheless, the existing dwelling was located 153 feet behind the front property line due to the required front yard septic reserve area. This placement reduced the buildable area of Applicant's rear yard to less than the required rear setback. Further, the topography of the rear yard slopes downward from the back of the dwelling to the rear property line, and also slopes from one side property line to the other.

Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicant. The Hearing Examiner finds that literal enforcement of the Code in this case would result in practical difficulty for the Applicant. If the requested variance is not granted, Mr. Sadtler will be unable to construct an average sized attached rear deck, and would therefore be denied property rights commonly enjoyed by other homeowners within the Jarrettswood community.

Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of the Code or public interest. The proposed deck will be approximately 30 feet from the closest side property line, and will not come any closer to adjoining properties than the existing dwelling. The deck will be approximately 125 to 150 feet away from the closest rear dwelling, and will be screened from view by a row of mature trees along Applicant's rear property line.

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Almost every other home in the neighborhood has a similar attached rear deck. The proposed deck will be compatible not only with the existing dwelling, but also with other decks in the community. The Applicant has the full support of all of his neighbors, and introduced letters from six adjoining property owners in support of his Application. The Hearing Examiner accepts the findings of the Department of Planning and Zoning, as verified by the aerial photograph (Staff Report Attachment 6), that the adjoining rear property will be screened from view of the proposed deck by a row of mature trees.

For the reasons set forth above, the Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setbacks than the distances requested herein.

Date: May 5, 2006

Rebecca A. Bryant
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JUNE 5, 2006.